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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/344,411	06/26/1999	CAROL CORPUS	CORPP101US	9031

7590 11/27/2002

DEBORAH LIU
AMIN & TUROCY, LLP
24TH FLOOR, NATIONAL CITY CENTER
1900 EAST 9TH STREET
CLEVELAND, OH 44114

EXAMINER

CHEVALIER, ALICIA ANN

ART UNIT PAPER NUMBER

1772

DATE MAILED: 11/27/2002

25

Please find below and/or attached an Office communication concerning this application or proceeding.

Notice of Non-Responsive Amendment

1. The request for a continued prosecution application (CPA) under 37 CFR 1.53(d) filed on October 21, 2002 is acknowledged. 37 CFR 1.53(d)(1) was amended to provide that the prior application of a CPA must be: (1) a utility or plant application that was filed under 35 U.S.C. 111(a) before May 29, 2000, (2) a design application, or (3) the national stage of an international application that was filed under 35 U.S.C. 363 before May 29, 2000. *See Changes to Application Examination and Provisional Application Practice*, interim rule, 65 *Fed. Reg.* 14865, 14872 (Mar. 20, 2000), 1233 *Off. Gaz. Pat. Office* 47, 52 (Apr. 11, 2000). Since a CPA of this application is not permitted under 37 CFR 1.53(d)(1), the improper request for a CPA is being treated as a request for continued examination of this application under 37 CFR 1.114. *See id.* at 14866, 1233 *Off. Gaz. Pat. Office* at 48. Since Applicant has already filed a CPA on August 17, 2001, which is after May 29, 2000, CPA practice no longer applies and the request was treated as a request for an RCE. *See* MPEP § 706.07 (h).
2. The amendment filed on October 21, 2002 canceling all claims drawn to the elected invention and presenting only claims drawn to a non-elected invention is non-responsive (MPEP § 821.03). The remaining claims are not readable on the elected invention because they are drawn to the method claims which were previously withdrawn from consideration after the restriction requirement of record in paper #5, filed June 28, 2000.

Since the above-mentioned amendment appears to be a *bona fide* attempt to reply, applicant is given a TIME PERIOD of ONE (1) MONTH or THIRTY (30) DAYS, whichever is longer, from the mailing date of this notice within which to supply the omission or correction in

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order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD UNDER 37 CFR 1.136(a) ARE AVAILABLE.

The general policy of the Office is not to permit the applicant to shift to claiming another invention after an election is once made and action given on the elected subject matter. Note that the applicant cannot, as a matter of right, file a request for continued examination (RCE) to obtain continued examination on the basis of claims that are independent and distinct from the claims previously claimed and examined (i.e., applicant cannot switch inventions by way of an RCE as a matter of right). When claims are presented which the examiner holds are drawn to an invention other than the one elected, he or she should treat the claims as outlined in MPEP § 821.03. See MPEP § 819. In RCE practice Applicants may not switch inventions (CPA divisional equivalent) as a matter of right or add new matter (CPA CIP equivalent).

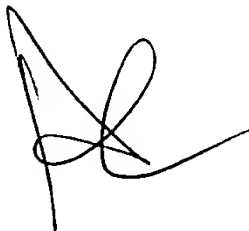
Conclusion


3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alicia Chevalier whose telephone number is (703) 305-1139. The Examiner can normally be reached on Monday through Thursday from 8:00 a.m. to 5:00 p.m. The Examiner can also be reached on alternate Fridays

If attempts to reach the Examiner are unsuccessful, the Examiner's supervisor, Harold Pyon can be reached by dialing (703) 308-4251. The fax phone number for the organization official non-final papers is (703) 872-9310. The fax number for after final papers is (703) 872-9311.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose phone number is (703) 308-0661.

ac
11/21/02




HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772

11/25/02